

M. F. TRASK

IBLA 70-666

Decided January 13, 1972

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 11383, in part.

Affirmed.

Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

An oil and gas lease offer filed for lands which are at that time withdrawn for Indian purposes by an Executive Order is properly rejected. Such an offer is nugatory and cannot be given life, even by a subsequent restoration of the lands.

Oil and Gas Leases: Applications

Where an offer to lease lands for oil and gas cannot be accepted because the lands, at the time of the filing of the offer, are not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

APPEARANCES: M. F. Trask, pro se.

OPINION BY MR. HENRIQUES

M. F. Trask has appealed to the Board of Land Appeals from a decision dated June 3, 1970, by which the New Mexico state office, Bureau of Land Management, rejected his noncompetitive public domain oil and gas lease offer, NM 11383, for the NW 1/4 sec. 17, SE 1/4 sec. 27, T. 19 N., R. 13 W., N.M.P.M., New Mexico, because these lands were withdrawn for use of the Navajo Indians by Executive Order No. 2513 of January 15, 1917, and are not subject to lease under the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970).

The appellant contends that only because of oversight were these lands not restored to oil and gas leasing under the Mineral Leasing Act by Public Land Order (PLO) 3460, as it was the intention of the Bureau of Land Management to have these lands opened to such leasing.

The lands are embraced within the limits of the odd-numbered sections granted to the Atlantic & Pacific Railroad Company by the Act of July 27, 1866, 14 Stat. 292. The Santa Fe Pacific Railroad Company, successor to the Atlantic & Pacific, relinquished the subject lands, inter alia, to the United States by a quitclaim deed dated November 2, 1931, SF 065068.

The record discloses that the subject lands were withdrawn by Executive Order No. 2513, January 15, 1917, from settlement and sale and set apart for use and occupancy by the Navajo and other Indians. No modification of this order to permit oil and gas leasing under the Mineral Leasing Act had been made prior to February 17, 1970, the date of filing of the Trask offer to lease. PLO 2198 of August 26, 1960, had revoked a Departmental Order of July 8, 1931, which had withdrawn all unreserved and otherwise undisposed of lands in T. 19 N., R. 13 W., N.M.P.M., inter alia, and withdrew lands relinquished and reconveyed to the United States in exchanges made pursuant to the Act of March 3, 1921, 41 Stat. 1225, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, for Indian use, in aid of proposed legislation.

PLO 3460 of October 20, 1964, opened the lands relinquished and reconveyed to the United States by exchange, as described in paragraph 4 of PLO 2198, to oil and gas leasing under the Mineral Leasing Act, but this Order did not make any change in the effective withdrawal established by Executive Order No. 2513. Thus, it is clear that the said NW 1/4 sec. 17, SE 1/4 sec. 27, T. 19 N., R. 13 W., were not available for oil and gas leasing by the Bureau of Land Management when the Trask offer was filed. An application for a noncompetitive oil and gas lease on lands which have been withdrawn for Indian use is properly rejected. D. Miller, A-27227 (December 12, 1955).

Subsequent orders, PLO 4882 of August 3, 1970, and PLO 4964 of December 8, 1970, revoking Executive Order No. 2513, cannot help Trask as far as offer NM 11383 is concerned. Where an offer to lease lands for oil and gas cannot be accepted because the lands, at the time of the filing of the offer, are not available for leasing, the offer will be rejected and will not be held in suspense until the lands may become available for leasing. J. G. Hatheway et al., 68 I.D. 48 (1961). Such an offer is nugatory and cannot be given life subsequent to its date of filing, even by a restoration of the lands. See Roy Leonard Wilbur, Robert Montgomery Tubb, 61 I.D. 157 (1953); D. Miller, 60 I.D. 161 (1948); Charles W. Trounson, 60 I.D. 182 (1948).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the New Mexico state office is affirmed.

Douglas E. Henriques
Alternate Member

We concur:

Frederick Fishman, Member

Edward W. Stuebing, Member.

